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Attorneys for Plaintiff  
ALTERG, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALTERG, INC.

Plaintiff,

v.

ERIK B. CHERDAK.,

Defendant

Case No.:

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**JURY TRIAL DEMANDED**

1 Plaintiff, AlterG, Inc. (“AlterG”), for its complaint against Defendant Erik B. Cherdak  
2 (“Cherdak”), alleges as follows:

### 3 **NATURE OF THE ACTION**

4 1. This is a declaratory judgment action arising under the Declaratory Judgment Act,  
5 28 U.S.C. § 2201 *et seq.* and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*  
6 AlterG seeks a declaration of non-infringement of U.S. Patent Nos. 5,343,445 (“the ’445  
7 patent”) and 5,452,269 (“the ’269 patent”) (collectively, “Patents-in-Suit”).

### 8 **THE PATENTS-IN-SUIT**

9 2. The ’445 patent, entitled “Athletic Shoe with Timing Device,” issued August 30,  
10 1994, from U.S. Patent Application No. 85,936 filed July 6, 1993. The ’445 patent expired on  
11 July 6, 2013. A true and correct copy of the ’445 patent is attached hereto as **Exhibit 1**.

12 3. The ’269 patent, entitled “Athletic Shoe with Timing Device,” issued on  
13 September 19, 1995, from U.S. Patent Application No. 297,470 filed on August 29, 1994.  
14 The ’269 patent expired on July 6, 2013. A true and correct copy of the ’269 patent is  
15 attached hereto as **Exhibit 2**.

### 16 **PARTIES**

17 4. Plaintiff, AlterG, is a corporation duly organized and existing under the laws of the  
18 State of California, with its principal place of business located at 48438 Milmont Drive,  
19 Fremont, California 94538.

20 5. Upon information and belief, Defendant, Cherdak, resides at 149 Thurgood Street,  
21 Gaithersburg, Maryland 20878.

22 6. Upon information and belief, Defendant Cherdak is the exclusive owner of all  
23 right, title, and interest in the patents-in-suit.

### 24 **JURISDICTION AND VENUE**

25 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§  
26 1331, 1338 (a), and 1367 because this action arises under the Patent Laws of the United  
27 States, 35 U.S.C. § 1 *et seq.*, with a specific remedy sought based upon the laws authorizing  
28

1 actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and  
2 2202, the basis for which is fully set forth below.

3 8. This Court has personal jurisdiction over Mr. Cherdak pursuant to the laws of the  
4 State of California, including California's long-arm statute and California Code of Civil  
5 Procedure § 410.10 because, upon information and belief, Mr. Cherdak regularly conducts  
6 business in this judicial district. In particular, upon information and belief, Mr. Cherdak is in  
7 the business of licensing the Patents-in-Suit in this judicial district.

8 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400  
9 because Mr. Cherdak is doing business in this judicial district, and, in particular, Mr. Cherdak  
10 has attempted to license the Patents-in-Suit in this judicial district.

11 **THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES**

12 10. Mr. Cherdak is a non-practicing holder of the Patents-in-Suit. Mr. Cherdak sent a  
13 letter correspondence to AlterG dated March 28, 2016 (**Exhibit 3**), communicating its success  
14 in enforcing its Patents-in-Suit against other companies. In the letter, Mr. Cherdak listed  
15 other commercial entities that have entered into licenses. Mr. Cherdak's letter stated that  
16 AlterG could take a license of the Patents-in-Suit or be subject to an enforcement action  
17 against it. Mr. Cherdak attached a draft complaint.

18 11. Mr. Cherdak acknowledges an awareness of AlterG's business activities  
19 allegedly related to the Patents-in-Suit, because he enforced his patents against other  
20 companies with alleged similar products.

21 12. AlterG has not infringed and does not infringe, either directly or indirectly, any  
22 valid and enforceable claim of any of the Patents-in-Suit, either literally or under the doctrine  
23 of equivalents.

24 13. By virtue of the foregoing, a substantial controversy exists between the parties that  
25 is of sufficient immediacy and reality to warrant declaratory relief.

26 **COUNT I**

27 **(DECLARATION OF NON-INFRINGEMENT OF THE '445 PATENT)**

28 14. AlterG realleges and incorporates by reference the allegations in paragraphs 1-13  
above.

1 15. There is a real, immediate, substantial, and justiciable controversy between AlterG  
2 and Mr. Cherdak to warrant the issuance of a declaratory judgment.

3 16. A judicial declaration is necessary and appropriate so that AlterG may ascertain its  
4 rights regarding the '445 patent.

5 17. AlterG is entitled to a declaratory judgment that it has not infringed and does not  
6 infringe, directly or indirectly, any valid and enforceable claim of the '445 patent.

7 18. This controversy is appropriate for specific relief through a decree of a conclusive  
8 character.

9 **COUNT 2**

10 **(DECLARATION OF NON-INFRINGEMENT OF THE '269 PATENT)**

11 19. AlterG realleges and incorporates by reference the allegations in paragraphs 1-18  
12 above.

13 20. There is a real, immediate, substantial, and justiciable controversy between AlterG  
14 and Mr. Cherdak to warrant the issuance of a declaratory judgment.

15 21. A judicial declaration is necessary and appropriate so that AlterG may ascertain its  
16 rights regarding the '269 patent.

17 22. AlterG is entitled to a declaratory judgment that it has not infringed and does not  
18 infringe, directly or indirectly, any valid and enforceable claim of the '269 patent.

19 23. This controversy is appropriate for specific relief through a decree of a conclusive  
20 character.

21 **COUNT 3**

22 **(DECLARATORY JUDGMENT OF UNENFORCEABILITY DUE TO LACHES)**

23 24. AlterG realleges and incorporates by reference the allegations in paragraphs 1-23  
24 above.

25 25. On information and belief, Mr. Cherdak has been, or should have been, aware of  
26 AlterG's website, products, and services for many years.

27 26. On information and belief, Mr. Cherdak delayed in bringing a patent infringement  
28 lawsuit against AlterG.

27. Mr. Cherdak references companies such as Hangar, Inc. and Bioness, Inc. in its

1 letter, both companies that provide orthotic and prosthetic solutions to customers, similar to  
2 AlterG. Mr. Cherdak alleges that Bioness, Inc.'s products and AlterG's products were sold  
3 and used side-by-side. Mr. Cherdak filed suit at least against Hangar, Inc. in 2013.

4 28. On information and belief, this delay is unreasonable and unexcused.

5 29. Mr. Cherdak's delay has caused economic and evidentiary prejudice to AlterG.

6 30. Mr. Cherdak is barred in whole or in part from enforcing the Patents-in-Suit, or  
7 otherwise barred from obtaining damages for any alleged infringement of the Patents-in-Suit.

8 31. As a result of the acts described in the foregoing paragraphs, a substantial  
9 controversy exists of sufficient immediacy and reality to warrant the issuance of a declaratory  
10 judgment.

11 32. A judicial declaration is necessary and appropriate so that AlterG may ascertain  
12 its rights regarding Mr. Cherdak's ability to enforce the Patents-in-Suit or otherwise recover  
13 for any alleged infringement of the Patents-in-Suit.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, AlterG prays for the following relief:

16 1. That AlterG's products or services do not infringe any claims of the Patents-in  
17 -Suit;

18 2. A declaration that any damages Mr. Cherdak claims are barred in whole or in part  
19 by the doctrine of laches;

20 3. An order declaring that AlterG is a prevailing party and that this is an exceptional  
21 case awarding AlterG its costs, expenses, disbursements, and reasonable attorneys' fees under  
22 35 U.S.C. § 285, and all other statutes, rules, and common law; and

23 4. That Mr. Cherdak is ordered to pay all costs associated with this action; and

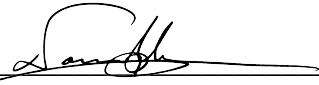
24 5. That AlterG be granted such other and additional relief as the Court deems just and  
25 proper.  
26  
27  
28

**JURY DEMAND**

AlterG demands a trial by jury on all issues presented in this Complaint.

Dated: April 4, 2016

Respectfully Submitted,  
MICLEAN GLEASON LLP

By:   
David J. Miclean  
Carmen M. Aviles  
Attorneys for Plaintiff AlterG, Inc.